

## **Deposition Designations for:**

**ELIHU INSELBUCH**  
**June 12, 2009**

### **Deposition Designation Key**

**CI = Certain insurers (green)**

**CNA = Continental Cas. Co &  
Continental Ins. Co. (red)**

**PP's = Plan Proponents (blue)**

**Obj: = Objection**

**Ctr = Counter Designation**

**R = Relevance**

**BE = Best Evidence**

**F = Foundation**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

X

In Re:

Chapter 11  
Case No.

01-01139 JFK

W.R. Grace & Co., et al.,

(Jointly  
Debtors. Administered)

X

— — —  
June 12, 2009

— — —

DEPOSITION of ELIHU INSELBUCH,

held at the offices of Caplin &  
Drysdale, Chartered, 375 Park Avenue,  
New York, New York, commencing at  
approximately 9:37 A.M., on the above  
date, before Lisa Lynch, a Registered  
Merit Reporter, New Jersey Certified  
Court Reporter, License No. XI00825,  
and Certified Realtime Reporter

— — —

MAGNA LEGAL SERVICES, LLP

7 Penn Center, 8th Floor  
1635 Market Street  
Philadelphia, PA 19103  
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Key

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& Continental Ins. Co. (red)

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1 MR. FINCH: Object to  
2 form.

3 A. I don't know what you  
4 mean. I have served as, and do serve  
5 as, counsel to some of the trust  
6 advisory committees.

7 Q. **And would you explain**  
8 **for the record what a trust advisory**  
9 **committee is?**

10 MR. FINCH: Object to  
11 form.

12 A. Under the terms of these  
13 plans and under the terms of the TDPs  
14 that are part of the plan documents,  
15 an entity is created called a trust  
16 advisory committee which consists of  
17 one or more attorneys who have  
18 responsibilities that are defined  
19 within the TDP documents and within  
20 the trust agreement documents.

21 MR. J. COHN: Dan, let's  
22 just note the arrival of two  
23 more counsel. Would you  
24 identify yourselves?

1 MR. MUELLER: Alex  
2 Mueller from Mendes & Mount for  
3 certain London market insurance  
4 companies.

5 MS. DeCHRISTOFARO:  
6 Elizabeth DeChristofaro from  
7 Ford Marrin for Continental  
8 Casualty Company and  
9 Continental Insurance  
10 Company.

11 THE WITNESS: Those  
12 appearances are not part of the  
13 roles of the TACs, and I don't  
14 remember where I was in the  
15 middle of my answer.

16 MR. COHN: Well, let's  
17 help you by reading back as far  
18 as you got in this answer.

19 (Off the record.)

20 (The Reporter reads the  
21 last answer.)

22 BY MR. COHN:

23 Q. **Do you have anything to**  
24 **add?**

CI

1 A. That's enough.

2 Q. **And in that capacity,**  
3 **have you been actually called upon to**  
4 **render advice to those trust advisory**  
5 **committees?**

6 A. From time to time.

7 Q. **Now, what is your role**  
8 **in the W.R. Grace Chapter 11 case?**

9 A. My firm is counsel to  
10 the asbestos creditors committee.

11 Q. **And what is your**  
12 **personal role in connection with that**  
13 **representation?**

14 A. I suspect that I am the  
15 lead counsel.

16 Q. **You suspect or is that**  
17 **what you are?**

18 A. What I am is in the eye  
19 of the beholder.

20 Q. **Did you participate in**  
21 **negotiations concerning the plan --**  
22 **strike that.**

23 **Did you participate in**  
24 **negotiations that led to the filing**

PP's  
Obj:  
R

CI

1 of the Chapter 11 plan that is now  
2 coming before the Bankruptcy Court?

3 A. I did.

4 Q. **Would you describe your**  
5 **role in those negotiations?**

6 A. I was counsel to the  
7 asbestos creditors committee.

8 Q. **Would it be fair to say**  
9 **that you were the lead negotiator for**  
10 **the asbestos creditors committee?**

11 MR. FINCH: Object to  
12 form.

13 A. I wouldn't say so.

14 Q. **Who else participated in**  
15 **the negotiations on behalf of the**  
16 **ACC?**

17 A. Well, if we're talking  
18 about the part of the negotiations  
19 that involve the crafting and  
20 agreement to the term sheet or the  
21 economic arrangements with the  
22 debtor, the committee -- when I say  
23 "the committee", I mean the asbestos  
24 creditors committee -- the committee

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PP's  
ctr

PP's  
Obj:  
R

7 (Pages 22 to 25)

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Obj: R

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1 appointed a negotiating subcommittee  
2 that attended those negotiations and  
3 I attended with them.

4 That negotiating subcommittee,  
5 as I remember, consisted of Mr. Rice;  
6 Mr. Weitz, W-e-i-t-z; Mr. Cooney, and  
7 one or both of Mr. Budd and/or Mr.  
8 Baron.

9 If we're talking about the  
10 negotiations thereafter that involved  
11 work with the futures rep and other  
12 plan proponent constituencies in  
13 developing what became the documents  
14 that reflect the plan, I played a  
15 minor role in that other than --  
16 well, I should say I played a minor  
17 role in that other than in connection  
18 with the development of the trust  
19 agreement and the TDP.

20 The other documents and the  
21 negotiation of those documents were  
22 assigned by the committee to my  
23 partner, Mr. Lockwood, and others who  
24 worked under his leadership.

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1 **Q. So is it fair to say on  
2 behalf of the ACC you were the person  
3 primarily responsible for the trust  
4 agreement and the TDP?**

5 A. I was the counsel  
6 primarily involved in that work.

7 MR. COHN: Let's mark  
8 this as Exhibit 2, please.

9 (Term sheet, 11 pages,  
10 marked for identification as  
11 Inselbuch Exhibit 2.)

12 BY MR. COHN:

13 **Q. Do you have Exhibit 2 in  
14 front of you?**

15 A. I do.

16 **Q. Do you recognize it?**

17 A. No.

18 **Q. If you would turn to the  
19 last four pages of that document, let  
20 me ask you whether you recognize  
21 those four pages.**

22 A. I do not. It purports  
23 to be the term sheet. I've never  
24 seen it in this form so I guess I

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Obj: R

1 could compare it with my copy of the  
2 term sheet that I signed and figure  
3 out whether it's the same document,  
4 but I have no way of knowing. If you  
5 represent to me that it is, I'll  
6 accept your representation.

7 Q. Well, yes, let me  
8 represent to you that's the same  
9 document that I have always seen and  
10 has always been represented to me to  
11 be the correct term sheet.

12 A. Well, I have a book in  
13 front of me with three documents that  
14 I've been working with. One is the  
15 TDP as it exists in the plan, one is  
16 the trust agreement as it exists in  
17 the plan and the other is the term  
18 sheet that I signed.

19 MR. COHN: Let's go off  
20 the record.

21 (Off the record.)  
22 (Term sheet, seven  
23 pages, marked for  
24 identification as Inselbuch

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1 Exhibit 2A.)  
2 (Preliminary Expert  
3 Report on W.R. Grace Trust by  
4 Mark Peterson dated March  
5 2009 marked for identification  
6 as Inselbuch Exhibit 3.)

7 (Exhibit 4 to Exhibit  
8 Book, Trust Distribution  
9 Procedures, marked for  
10 identification as Inselbuch  
11 Exhibit 4.)

12 MR. COHN: All right,  
13 back on the record.

14 **Q. Do you now have in front  
15 of you a document that has been  
16 marked as Exhibit 2A?**

17 A. Yes, sir.

18 **Q. Do you recognize that  
19 one?**

20 A. I do.

21 **Q. Tell us what it is.**

22 A. It's the term sheet that  
23 was signed among the debtor, the  
24 futures rep, the committee and I

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PP's  
Obj:R

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1 believe the equity. Yes, the equity  
2 committee I guess they're called.

3 **Q. Okay. And when you said**  
4 **"the committee" in your answer, you**  
5 **meant the Asbestos Claimants**  
6 **Committee?**

7 A. Yes. I will mean that  
8 always.

9 **Q. Terrific. And that's**  
10 **also what we mean when we say ACC?**

11 A. Yes.

12 **Q. Now, does this document,**  
13 **Exhibit 2A, reflect the entire deal**  
14 **amongst those parties concerning the**  
15 **subject matter thereafter at the time**  
16 **that it was entered into?**

17 MR. FINCH: Object to  
18 form.

19 A. Like all term sheets, it  
20 reflects all the points that the  
21 people who signed it thought needed  
22 to be put on paper at the time.

23 **Q. And what points were**  
24 **agreed to but not put on paper?**

1 document.

2 **Q. Have you reviewed a**  
3 **transcript of the recent deposition**  
4 **of Peter Lockwood?**

5 A. I read it briefly,  
6 quickly.

7 **Q. In that brief reading,**  
8 **did you come across any statements**  
9 **made by Mr. Lockwood with which you**  
10 **disagreed?**

11 MR. FINCH: Object to  
12 form, vague, overbroad.

13 A. Yeah, there was one  
14 place where he was talking about or  
15 answering questions that had to do  
16 with a provision in the term sheet --  
17 in the TDP -- let's see -- in the  
18 extraordinary claims section as to  
19 whether or not that portion of the  
20 extraordinary claims criteria which  
21 requires that there not be the  
22 potential for substantial recovery  
23 elsewhere would apply to the  
24 extraordinary claim that would

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1 A. None that I recall. But  
2 for sure when you -- when you  
3 negotiate a term sheet, you  
4 understand that what will evolve in  
5 what are much more complicated  
6 documents are issues subsidiary to  
7 the issues that are agreed in the  
8 term sheet that will need to be  
9 resolved over time within the context  
10 of the term sheet agreement.

11 **Q. Were there any**  
12 **understandings reached in connection**  
13 **with this term sheet that would not**  
14 **rise to the level of an agreement?**

15 A. Not --

16 MR. FINCH: Object to  
17 form.

18 A. -- that I recall.

19 **Q. And specifically**  
20 **concerning treatment of Libby claims,**  
21 **were there any agreements or**  
22 **understandings?**

23 A. Not that I recall, other  
24 than what's provided in the

1 satisfy the criteria otherwise for an  
2 eight times treatment. He was  
3 unclear about that, at best, and  
4 perhaps wrong. My understanding of  
5 that provision is that that  
6 requirement is included in either  
7 category of the extraordinary claims  
8 treatment.

9 **Q. All right. To qualify**  
10 **for the eight times multiplier under**  
11 **extraordinary claims treatment, you**  
12 **must, in addition to meeting the**  
13 **exposure criteria set forth in the**  
14 **TDP, also show little likelihood of**  
15 **substantial recovery elsewhere?**

16 A. Whatever that language  
17 is, yes, for sure.

18 **Q. Any other statements**  
19 **come to mind that you saw with which**  
20 **you did not agree?**

21 MR. FINCH: Object to  
22 form.

23 A. Not that I recall off  
24 the top of my head.

9 (Pages 30 to 33)

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1 Q. Have you reviewed a  
 2 transcript of the recent deposition  
 3 of Mark Peterson?

4 A. No.

5 Q. All right. Let me now  
 6 hand you a document that has been  
 7 marked as Exhibit 3. This is Dr.  
 8 Peterson's report.

9 MR. COHN: What I'm  
 10 handing around the room are  
 11 just the pages on which I  
 12 intend to ask questions because  
 13 otherwise the copying would  
 14 have been voluminous.

15 Q. I'm sorry. Did I --

16 A. You didn't ask me  
 17 anything.

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Obj:R

18 Q. Thank you. Do you  
 19 recognize the document that has been  
 20 marked Exhibit 3?

21 A. I recognize it says what  
 22 it says it is.

23 Q. Which is what?

24 A. It says it's the

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PP's  
Obj:R

1 Preliminary Expert Report on W.R.  
 2 Grace Trust by Mark Peterson of Legal  
 3 Analysis Systems dated March 2009.

4 Q. And do you know Dr.  
 5 Peterson?

6 A. I do.

7 Q. What is his capacity in  
 8 this case?

9 A. He is engaged as an  
 10 expert to assist the asbestos -- to  
 11 assist the committee.

12 Q. Thank you.

13 Let me now hand you a document  
 14 that's been marked as Exhibit 4. I  
 15 will represent to everyone concerned  
 16 this is a copy of the trust  
 17 distribution procedures, or TDP, that  
 18 has been attached to the plan.

19 MR. COHN: In accordance  
 20 with our custom at these  
 21 depositions, the parties will  
 22 use their own copies to refer  
 23 to but we understand it is the  
 24 same document.

1 Q. Do you recognize Exhibit  
 2 4, Mr. Inselbuch?  
 3 A. I accept your  
 4 representation that it is what it  
 5 says it is.

6 Q. Okay, thank you.

7 Now, let me ask you to look at  
 8 Exhibit 3, which is Dr. Peterson's  
 9 report, and take a look at page five.

10 A. I'm at page five.

11 Q. All right.

12 A. I should warn you I'm  
 13 reading this for the first time.

14 Q. Okay. Let me point you  
 15 then to exactly the statement I want  
 16 you to read. Would you read the  
 17 first sentence of the second  
 18 paragraph on page five?

19 A. Yes.

20 Q. Would you like to read  
 21 it out loud, please, for the  
 22 record?

23 A. "The trust's TDP follows  
 24 the standard form used for almost

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PP's  
Obj:  
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1 every asbestos trust created since  
 2 2002."

3 Q. Do you agree with that  
 4 statement?

5 A. Yes.

6 Q. So when I talk about the  
 7 standard form or a term such as that,  
 8 you'll understand that I'm referring  
 9 to what Dr. Peterson is referring to  
 10 here, which is the standard form of  
 11 TDP that has been used for almost  
 12 every asbestos trust created since  
 13 2002?

14 MR. FINCH: Object to  
 15 form.

16 A. Is that a question?

17 Q. Will you understand that  
 18 that's what I mean by that term?

19 A. Okay.

20 Q. Now, in this case there  
 21 were some departures from the  
 22 standard form; is that correct?

23 A. In each case there is  
 24 some departures from the standard

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PP's  
Page 34  
Obj: R

C1 1 form and there were some here too.

2 **Q. Who drafted the TDP in**  
3 **this case?**4 A. The TDP that evolved  
5 into the one in this case?

6 Q. Yes.

7 A. That's now on file?

8 Q. Exhibit 4.

9 A. The first draft, my  
10 office, probably Anne McMillan.11 **Q. And how did the document**  
12 **evolve from that first draft into**  
13 **Exhibit 4?**14 A. Okay. You will recall  
15 that at some point the Court relieved  
16 the debtor's exclusivity. At that  
17 point the committee and the futures  
18 rep determined to file their own  
19 plan, proposed plan of  
20 reorganization.21 In that connection, it was  
22 understood that there would be the  
23 need for a trust agreement and a TDP  
24 and it was at that point, which I

C1

1 the committee and the futures rep on  
2 the terms of the TDP.3 Events then overtook that plan.  
4 In fact, the events that you make  
5 reference to with this term sheet  
6 which was signed -- I'm referring to  
7 Exhibit 2A -- in early April of 2008  
8 and now there was a TDP that needed  
9 to be considered by the other plan  
10 proponents because it would now not  
11 be associated with a separate plan  
12 that had been filed by the committee  
13 and the futures rep but, rather,  
14 would evolve into a plan that would  
15 be filed by the plan proponents as  
16 part of that plan.17 In the spring of 2008 the  
18 committee and the futures rep were  
19 already aware of criticisms that  
20 counsel for some of the Libby  
21 claimants had with the terms of the  
22 TDP and we entered into a dialogue at  
23 the instructions of the committee  
24 with you and with Mr. Heberling to

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PP's  
Obj: RPP's  
Page 35  
Obj: RC1 1 believe was somewhere in the fall of  
2 2007, that we began the preparation  
3 of the TDP.4 A draft was crafted by our  
5 office for consideration by the  
6 committee. After the committee  
7 considered the draft and considered  
8 input from Dr. Peterson, the draft  
9 was put in a form that was then  
10 submitted to the futures rep's  
11 counsel for their consideration. And  
12 after we received their comments and  
13 suggestions, the draft was further  
14 edited and reconsidered by the  
15 committee and sometime by the  
16 beginning/early part of 2008 there  
17 was a TDP that was agreeable to the  
18 committee and to the futures rep.19 Prior to that time we had  
20 actually filed a plan, I believe,  
21 that was proposed by the committee  
22 and the futures rep but I believe --  
23 my best memory is that plan was filed  
24 before there was agreement between1 see whether points that you were  
2 making were of sufficient validity to  
3 cause us to consider changes in the  
4 TDP. Some of those points were so  
5 considered and resulted in changes in  
6 the TDP that evolved in the spring  
7 and summer of 2008 and are reflected  
8 in the plan as filed.9 There were also comments to the  
10 TDP that were received from other  
11 parties who had an interest and a  
12 right to consider the documents. I'm  
13 mindful of the representatives that  
14 counsel for Sealed Air participated  
15 in some parts of the TDP and trust  
16 agreement and there may have been  
17 comments as well from the debtor.  
18 I'm not -- I don't recall. But the  
19 effect of all of that was it was --  
20 the result of all of that was the TDP  
21 that is now your Exhibit 4. That's  
22 the general history of its evolution.23 **Q. Let's turn to Section**  
24 **5.3(b)(3) of the TDP at pages 31 and**

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PP's  
Obj: RPP's  
Obj: R

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<p>1 into two parts. The first part is  2 the greater of the trust's last offer  3 to the claimant or the award that the  4 claimant declined in non-binding  5 arbitration. That's what it says the  6 first part is. However, that amount  7 should not exceed the amount that the  8 jury decides.</p>	<p>1 pending question.)  2 MR. FINCH: Object to  3 form.  4 A. No. It's the amount  5 between whatever the award was and  6 what was paid, limited by the maximum  7 value.</p>
<p>9 Now, the balance, it says, gets  10 divided into five equal installments  11 in years 6 through 10 following the  12 year of the initial payment, all of  13 that again subject to the applicable  14 payment percentage, the maximum  15 available payment and the claims  16 payment ratio provisions. So that's  17 how it gets paid out. And it doesn't  18 get any sequencing adjustments.</p>	<p>8 Q. Right. So --  9 A. Could be less.  10 Q. That's a very fair  11 point. So let's assume that the jury  12 verdict is in excess of the --  13 A. Then it would be the  14 difference between the maximum --  15 Q. -- maximum value.  16 A. -- value and what was  17 already paid.</p>
<p>19 Q. And is it subject to  20 maximum value or is it --  21 A. Yes, and it's subject to  22 the maximum values.  23 Q. So that the amount of  24 the trust's last offer or the</p>	<p>18 Q. And when we say "maximum  19 value", to Mr. Finch's point --  20 A. Yeah.  21 Q. -- we are including --  22 that is the greater of the maximum  23 value set forth in the matrix or the  24 scheduled value multiplied by the</p>
Page 103	Page 105
<p>1 non-binding arbitration award --  2 A. Yes.  3 Q. -- assuming that they --  4 that the jury verdict is not less  5 than those amounts --  6 A. Yes.  7 Q. -- will get paid on the  8 same basis as though the claim had  9 been allowed -- excuse me --  10 liquidated upon expedited review?  11 A. That's what it seems to  12 say.  13 Q. The next traunch, if you  14 will, of the jury verdict is the  15 amount between that initial payment  16 and the maximum value for the claim.  17 Is that correct?</p>	<p>1 extraordianry claims multiplier if  2 the claim is an extraordinary  3 claim?  4 A. Well, maximum value is a  5 defined term. It's a defined term  6 with respect to extraordinary claims  7 too.  8 Q. And then to the extent  9 that there is remaining value to the  10 jury verdict over and above those two  11 traunches that we spoke about, how  12 does that get paid?</p>
<p>18 MR. FINCH: Object to  19 form. Maximum value or maximum  20 extraordinary value as the case  21 may be.  22 THE WITNESS: Could I  23 have the question back?  24 (The reporter reads the</p>	<p>13 A. It doesn't.  14 Q. I just want to make sure  15 I understand your testimony a few  16 minutes ago. Did I hear you  17 correctly that, to your knowledge, no  18 claimant has ever exercised the right  19 to pursue its claim in the tort  20 system under one of these standard  21 form TDPs?  22 A. That's my best  23 recollection.  24 Q. And you would most</p>

PP's  
Obj:  
R

1 likely have been aware if such an  
 2 event had taken place?

3 A. I think so, but I can't  
 4 be sure of that.

5 **Q. All right. Let's talk**  
 6 **about the extraordinary claims**  
 7 **multiplier under Section 5.4(a).**

8 A. Yes.

9 MR. COHN: I'm sorry,  
 10 Dan. Where are you?

11 MR. COHN: Section  
 12 5.4(a) in the TDP.

13 MR. FINCH: Page 32.

14 **Q. Now, is it fair to say**  
 15 **that to obtain liquidation of a claim**  
 16 **as an extraordinary claim a claimant**  
 17 **must meet two criteria, one having to**  
 18 **do with exposure and one having to do**  
 19 **with little likelihood of a**  
 20 **substantial recovery elsewhere?**

21 A. I don't know whether  
 22 it's fair to say that. I think  
 23 that's correct.

24 **Q. Now, focusing first on**

PP's  
Obj: R

1 **Q. How did this change come**  
 2 **about?**

3 A. Based upon discussions  
 4 that I and members of the committee  
 5 had with you and Mr. Heberling, the  
 6 idea was that, as distinguished from  
 7 the usual situation where asbestos  
 8 claimants were generally exposed to  
 9 more than one defendant's product, it  
 10 would be the case in Libby or for  
 11 people exposed in Libby that there  
 12 would be only exposure to Grace's  
 13 product and, thus, that was a little  
 14 different from what was normally  
 15 provided.

16 To put in context what the  
 17 extraordinary claims provision is  
 18 trying to accomplish, as you know,  
 19 the scheduled values or even the  
 20 individual review values are meant to  
 21 reflect the respective defendants'  
 22 share of the responsibility for the  
 23 claim as kind of evidenced  
 24 historically by what the defendant

1 **the exposure criteria, how do these**  
 2 **vary from standard form TDPs that**  
 3 **we've been referring to?**

4 A. The variance is the  
 5 additional provision toward the  
 6 bottom of the runover paragraph on  
 7 page 33 that provides for an  
 8 additional category where the  
 9 exposure was 95 percent the result of  
 10 exposure to Grace products.

11 **Q. So under the standard**  
 12 **form of TDP, there is an**  
 13 **extraordinary claim treatment for**  
 14 **exposures that are 75 percent the**  
 15 **result of the debtor's asbestos?**

16 A. Correct.

17 **Q. And those provide a five**  
 18 **times multiplier for such claims?**

19 A. That's correct.

20 **Q. And here the change is**  
 21 **that there's an eight times**  
 22 **multiplier for exposures of 95**  
 23 **percent?**

24 A. That's correct.

1 had paid to settle claims.

2 In most jurisdiction, the  
 3 defendant, which would be Grace here  
 4 but it could be any of the others,  
 5 would be jointly and severally liable  
 6 with others for the tort  
 7 responsibility and, thus, if the case  
 8 went to verdict, they would be a  
 9 single recovery, a single amount, and  
 10 any one of the jointly and severally  
 11 responsible tort feasors would have  
 12 to pay that if called upon to pay  
 13 that. And that would develop into,  
 14 under the state law, rules that would  
 15 involve contribution or things like  
 16 that among joint tort feasors.

17 The TDP is designed to provide  
 18 for an award in the normal case where  
 19 there are multiplicity of available  
 20 defendants of that defendant's  
 21 respective share. When we first  
 22 worked with this concept, which I  
 23 believe goes back to the original  
 24 Manville, maybe even the Manville

1 defendant would have specific  
 2 liability to the particular claimant  
 3 because of the exposure to the  
 4 particular product which was caused  
 5 in part by this defendant even if  
 6 they didn't manufacture it.

7 MR. SPEIGHTS: Thank  
 8 you, sir.

9 THE WITNESS: Next?

10 MR. FINCH: Lunch break?

11 (Off the record.)

PP's  
Obj: R, BE, F

12 EXAMINATION BY

13 MR. BROWN:

14 Q. Good afternoon, Mr.  
 15 Inselbuch. Michael Brown. I  
 16 represent Geico, Republic Insurance  
 17 Company, Seaton Insurance Company  
 18 and OneBeacon America Insurance  
 19 Company.

20 A. How fortunate for you.

21 Q. I want to follow up on  
 22 some of Mr. Cohn's questioning of you  
 23 earlier this morning and I think --

24 PP's  
Obj: R, BE, F

1 I'm not sure I followed all of the  
 2 exhibits but I believe Exhibit 2A is  
 3 the term sheet, at least your copy of  
 4 the term sheet, the one you were  
 5 familiar with. Is that correct?

6 A. Yes, sir. It's the one  
 7 I signed.

8 Q. Okay. Do you have that  
 9 in front of you?

10 A. I do.

11 Q. Okay. I'm correct, am I  
 12 not, that it's dated April 6, 2008?

13 A. That's correct.

14 Q. And you executed it on  
 15 behalf of the official committee of  
 16 asbestos personal injury claimants,  
 17 otherwise known as the committee, or  
 18 the ACC, correct?

19 A. That's correct.

20 Q. Okay. You indicated  
 21 earlier in response to one of Mr.  
 22 Cohn's questions that the ACC had a  
 23 negotiating subcommittee and I  
 24 understood you to be saying that that

1 was a subcommittee in connection with  
 2 the negotiations leading to the term  
 3 sheet. Is that correct?

4 A. That's correct.

5 Q. Okay. And those  
 6 individuals were Joe Rice, Perry  
 7 Weitz, John Cooney and Fred Baron  
 8 and/or Russell Budd. Am I correct?

9 A. No, not Fred, no. Steve  
 10 Baron --

11 Q. Steve Baron. I'm sorry.  
 12 A. -- and/or Russell

13 Budd.

14 Q. All right. Am I correct  
 15 that counsel for the ACC was also  
 16 involved in those negotiations?

17 A. Correct.

18 Q. And would that be you  
 19 and Mr. Lockwood?

20 A. It would certainly be  
 21 me. I don't recall whether Lockwood  
 22 was there for some or all of that.

23 Q. Okay. Did the other  
 24 parties that ultimately became the

1 plan proponents -- did they also have  
 2 negotiating teams?

3 A. The debtor certainly  
 4 did, the futures claimants certainly  
 5 did, the equity security holder  
 6 certainly did, yes.

7 Q. Okay. Can you identify  
 8 the debtor's negotiating team?

9 A. Their chairman was  
 10 there, their general counsel was  
 11 there, their chief financial officer  
 12 was there, Mr. Bernick was there, the  
 13 chief legal officer was there. There  
 14 may have been others but those are  
 15 the people I remember.

16 Q. Okay. The chairman was  
 17 Mr. Festa?

18 A. Yes, sir.

19 Q. And the general counsel  
 20 was Mr. Shelnitz?

21 A. Yes, sir.

22 Q. And the CFO was Mr.  
 23 LaForce?

24 A. I don't recall his

PP's  
Obj:  
R,  
BE,  
F

PP's  
Obj:  
R,  
BE,  
F

PP's  
Obj: R,  
BE  
F

C1

PP's  
Obj: R, BE, F

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1 name.

2 Q. Okay. Who was the chief  
3 legal officer?4 A. That would have been Mr.  
5 Shelnitz.6 Q. Okay. And who was the  
7 negotiating team for the FCR?8 A. Mr. Frankel, at some  
9 points David Austern I believe was  
10 there. There may have been others.

11 Q. You don't recall them?

12 A. I don't recall now.

13 Q. Okay. And how about the  
14 equity committee?

15 A. Mr. Weschler.

16 Q. Is that it?

17 A. As far as I recall.

18 Q. Now, other than the four  
19 parties that ultimately signed the  
20 term sheet, were there any other  
21 parties or entities or individuals  
22 that were involved in the  
23 negotiations leading up to the April  
24 6, 2008 term sheet?

C1

1 A. Not that I recall.

2 Q. All right. I think you  
3 testified earlier this morning that  
4 after the term sheet -- Well, let me  
5 back up.6 You indicated in your earlier  
7 testimony, I believe, that Anne  
8 McMillan from your office prepared  
9 the initial draft of the TDP. Is  
0 that correct?1 A. I said it may have been  
2 Anne McMillan.3 Q. Okay. Do you know  
4 whether whoever created it -- well,  
5 let me back up.6 Was it someone from Caplin &  
7 Drysdale that created the initial  
8 draft?

9 A. Correct.

10 Q. Do you know whether that  
11 draft still exists today?

12 A. No.

13 Q. Do you know what  
14 model -- I think I heard the termPP's  
Obj: R,  
BE

F

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PP's  
ctr

C1

PP's Obj:  
R, BE, F1 MR. FINCH: Object to  
2 form.

3 A. Not that I recall.

4 Q. Were any of the debtor's  
5 insurers involved in the negotiations  
6 that resulted in the term sheet?

7 A. None that I attended.

8 Q. To your knowledge, were  
9 any of them asked or invited to  
10 participate in the negotiations that  
11 led up to the term sheet?12 MR. FINCH: Objection,  
13 lack of foundation.

14 A. I don't know.

15 Q. Were you ever advised by  
16 any other party to the negotiations  
17 that they did not want the insurers  
18 to participate in the negotiations?

19 MS. BAER: Objection.

20 A. No.

21 Q. Did any other party to  
22 the negotiations suggest that they  
23 did want the insurers involved in the  
24 negotiations?PP's Obj:  
R, BE, F

ctr

PP's  
Obj:  
BE, F1 earlier in your testimony that there  
2 was a model that was used.3 Do you know what model was used  
4 to create the first draft of the  
5 TDP?6 A. My ex -- I don't know  
7 the answer. My expectation would be  
8 that she or someone else in the firm  
9 would have started with the  
10 then-most-recent rendition of the TDP  
11 sometime in 2007 that had been  
12 approved either by a committee in  
13 some other bankruptcy or in court and  
14 used that as the beginning place to  
15 start. I don't recall what that  
16 might have been.17 Q. Okay. Now, you  
18 indicated that that initial draft was  
19 created by your office in the fall of  
20 two thousand --

21 A. Two thousand --

22 Q. Sorry -- in the fall of  
23 2007 for consideration by the  
24 committee.PP's  
Obj:  
R,  
BE

PP's Obj:  
R, BE

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PP's  
Obj:  
R,  
BE

1 A. I think that's  
2 correct.  
3 Q. Is that right?  
4 A. I believe that's  
5 correct.  
6 Q. And that was after your  
7 office had received input from Mark  
8 Peterson on the draft, as I  
9 understood your earlier testimony?  
10 A. No, before.  
11 Q. Okay.  
12 A. The draft would have had  
13 blanks for all of the numbers and for  
14 the payment percentage.  
15 Q. Okay. Did it go to Mark  
16 Peterson first or did it go to your  
17 client first?  
18 A. I don't recall. It  
19 certainly would not have gone to  
20 Peterson first. It might have gone  
21 to him simultaneously.  
22 Q. And Mr. Peterson, I  
23 gather, provided you with his  
24 comments?

PP's  
Obj: R, BE

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C1

1 alternate recommendations based upon  
2 different concepts. He sometimes  
3 provides them with ranges of  
4 recommendations for them to  
5 consider.

6 Q. Okay. You indicated  
7 earlier that in or around early 2008  
8 that the committee shared its then  
9 working draft of the TDP with the  
10 FCR. Do I have that correct?

11 A. I think that timing is  
12 correct but I'm not sure. It could  
13 have been a little earlier than  
14 that.

15 Q. And had there been a  
16 plan filed, a joint plan, proposed  
17 plan, by the ACC and FCR at that  
18 point?

19 A. That's my  
20 recollection.

21 Q. All right. You then  
22 indicated that the -- the plan I  
23 suppose you were talking about was  
24 superseded by events was, I think,

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PP's  
Obj:  
R,  
BE

C1

1 the term that you've used and that's  
2 what ultimately led up to the term  
3 sheet. What events were you alluding  
4 to?

5 A. Well, soon thereafter we  
6 began the estimation hearings and in  
7 the course of the estimation hearings  
8 what the -- the negotiations that led  
9 to the term sheet began. And once  
10 there was agreement on the term sheet  
11 with the debtor, there was no need to  
12 pursue the separate plan that the  
13 committee and the futures rep had  
14 filed because we would be pursuing a  
15 plan with the debtor and the equity  
16 committee.

17 Q. When did the estimation  
18 hearing begin?

19 A. I don't recall offhand,  
20 but my best guess would be sometime  
21 in March of 2008.

22 THE WITNESS: Earlier  
23 than that?

24 A. Well, I've got that

C1

PP's  
Obj:  
R,  
BE

1 wrong. I'm told I got that wrong.  
2 It was earlier in 2008.

3 **Q. You indicated also that**  
4 **at some point -- it wasn't clear to**  
5 **me when in this process -- the draft**  
6 **TDP was shared with Sealed Air. Can**  
7 **you tell me when that was?**

8 A. It would have been later  
9 on, after there was pretty much a  
10 draft of plan documents because they  
11 didn't just see the TDP; they saw a  
12 whole bunch of plan documents to  
13 provide their comments. I can't give  
14 you a date, but it would have been in  
15 2008 at some point.

16 **Q. Would it have been after**  
17 **the term sheet was signed but before**  
18 **the initial plan documents were filed**  
19 **in September of 2008?**

20 A. I don't recall.

21 **Q. Do you have an**  
22 **understanding as to why Sealed Air**  
23 **had an interest in the TDPs?**

24 A. There was a settlement

1 agreement with Sealed Air and  
2 Fresenius under which they would pay  
3 considerable sums that would be  
4 available to compensate some of the  
5 claimants here. And under the terms  
6 of that settlement agreements, there  
7 were requirements that had to be  
8 accomplished in order to trigger  
9 their obligation to pay the monies.  
10 Some of those obligations involved  
11 protections and language in plans --  
12 in a plan of reorganization for their  
13 benefit.

14 **Q. At the time that the**  
15 **TDPs were shared with Sealed Air for**  
16 **their review, were they also shared**  
17 **with the debtor's insurers for the**  
18 **debtor's insurers' review?**

19 A. I have no idea.

20 **Q. Let me shift gears for a**  
21 **moment because I gather Mr. Cohn is**  
22 **not back with the copies.**

23 MR. J. COHN: I am.

24 MR. BROWN: Oh, you

1 are.

2 MR. J. COHN: Yes.

3 MR. BROWN: Do you want  
4 to, I guess, give the witness  
5 the one-page bio first?

6 MR. J. COHN: Sure.

7 (Biography page of Elihu  
8 Inselbuch marked for  
9 identification as Inselbuch  
10 Exhibit 5.)

11 **Q. Mr. Inselbuch, you**  
12 **should have before you a one-page**  
13 **document that I'm going to bet that**  
14 **you don't have any trouble**  
15 **identifying but I'll ask the question**  
16 **anyway. Can you identify it?**

17 A. It's a biography of me  
18 that is, I believe, put together by  
19 my firm and is either on the website  
20 or in other material where the firm  
21 collects a rogues gallery of its  
22 lawyers.

23 **Q. I will represent to you**  
24 **that I pulled it off your website.**

1 **In the second paragraph there**  
2 **are a number of cases that are**  
3 **referenced --**

4 A. Yes.

5 **Q. -- some of which you**  
6 **have mentioned earlier in your**  
7 **testimony today, and what I want to**  
8 **ask you about each of those cases is**  
9 **whether Mark Peterson was involved in**  
10 **those cases. So can you run down the**  
11 **list that is in the bio and tell me,**  
12 **one, whether Mark Peterson was**  
13 **involved and, two, as to each what**  
14 **his role was?**

15 A. Okay.

16 MR. FINCH: Object to  
17 form. You can answer.

18 THE WITNESS: I can  
19 answer this?

20 MR. FINCH: Yes.

21 A. The best I can do, let's  
22 see. Johns-Manville, he was not  
23 involved in the original bankruptcy  
24 proceeding. In the restructuring

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1 throughout the country, how 2 information might be made available 3 to the trust, how the process can be 4 made less cumbersome, things like 5 that.	1 consistent with the expectations of 2 the constituencies that care about 3 it.
6 <b>Q. Are the members of the 7 plaintiffs' asbestos bar the only 8 ones that have that knowledge?</b>	4 <b>Q. And the only 5 constituencies that care about it, I 6 gather, are the asbestos claimants?</b>
9 A. In that detail, yes.	7 A. And the futures 8 representative.
10 <b>Q. There's no defense 11 attorneys in asbestos litigation that 12 would have that knowledge?</b>	9 <b>Q. Do the insurers have any 10 interest in it?</b>
13 A. No, not all of it. Very 14 little of it. The defense attorneys 15 will be familiar with what's in their 16 files and what they do.	11 A. The insurers have an 12 interest in what they're required to 13 pay. What they're required to pay is 14 defined by their contracts.
17 <b>Q. And how does that 18 differ --</b>	15 MR. BROWN: All right. 16 I think, Mr. Inselbuch, that 17 may be all I have. I'll pass 18 to the next questioner.
19 MR. FINCH: Object to 20 form.	19 MR. J. COHN: I'll 20 follow up. I think it makes 21 sense.
22 <b>Q. -- from what the 23 plaintiffs' asbestos attorneys do?</b>	22 EXAMINATION BY 23 MR. J. COHN:
24 A. It's like day and night.	24 1 <b>Q. Mr. Inselbuch, Jacob 2 Cohn for Federal Insurance Company. 3 If we could go to the TDPs for 4 a moment, Exhibit --</b>
1 Q. In your experience with 2 other asbestos trusts, does the trust 3 agreements provide that the trustees 4 will be required to consult with the 5 TAC members on various issues?	5 A. I'd ask you to speak a 6 little louder --
7 A. The documents say what 8 they say. They often call for 9 consultation on specific issues.	7 <b>Q. Sure. You know what? 8 Why don't I come down there?</b>
9 <b>Q. And do they often also 10 call for the trustees to obtain the 11 consent of the TAC and the future 12 claimants' representative before 13 certain actions can be taken?</b>	9 A. -- because you're 10 talking in my bad ear.
11 A. Yes. And failing that 12 consent, there are provisions for 13 overriding the refusal of consent.	11 <b>Q. All right. You have 12 the --</b>
13 <b>Q. What is the necessity of 14 having these consent provisions in 15 the trust agreement?</b>	13 A. I have the TDP.
16 MR. FINCH: Object to 17 form.	14 <b>Q. -- TDPs. If you take a 15 look at page 31, the end of 16 5.3(b)(1)(B) --</b>
18 A. So that as -- as the 19 trust is administered, it will be 20 administered in a way that is	17 A. Yeah.
	18 <b>Q. -- it's the paragraph 19 above the scheduled value 20 paragraph --</b>
	21 A. Yes.
	22 <b>Q. -- beginning provision.</b>
	23 A. Yes.
	24 <b>Q. It has a reference to</b>

PP's  
Obj:  
R,  
BE,  
F

C1

PP's Obj:  
R, BE, F

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1 choice of law.

2 A. Yes.

3 Q. And it says -- there's a  
4 reference to the Alabama wrongful  
5 death statute and there's a reference  
6 to "shall only govern the rights  
7 between the PI trust and the  
8 claimant, and, to the extent the PI  
9 trust seeks recovery from any entity  
10 that provided insurance coverage to  
11 Grace, the Alabama wrongful death  
12 statute shall govern."

13 A. Uh-huh.

14 Q. Are you familiar with  
15 that provision?

16 A. I see it.

17 Q. What is the purpose of  
18 that provision?

19 A. Which part of it?

20 Q. The part that applies --  
21 at least purports to apply a rule to  
22 insurer disputes.23 MR. FINCH: Object to  
24 form.

C1

PP's  
Obj:  
R,  
BE,  
F1 Whether or not this provision,  
2 as it states, also will govern the  
3 relationship with insurers is  
4 something that I guess the insurers  
5 can debate at some point in court.6 Q. Is this, therefore,  
7 intended to be a carve-out from the  
8 insurer neutrality provision of the  
9 plan?10 MR. FINCH: Object to  
11 form, lack of foundation.12 (The witness reviews the  
13 document.)14 A. I don't know the answer  
15 to that.16 Q. You are familiar with  
17 the insurance neutrality provision of  
18 the plan?

19 A. Only very generally.

20 Q. Would reviewing that  
21 give you any help in answering this  
22 question?23 A. No. That's something  
24 you ought to ask Mr. Lockwood.

C1

PP's Obj:  
R, BE, F

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1 (The witness reviews the  
2 document.)3 A. The point of this whole  
4 provision was to ameliorate a problem  
5 that existed under the law of  
6 Alabama. As you know, under the  
7 terms of the TDP, no punitive damages  
8 are included in the recovery. As  
9 this was all explained to me at the  
10 time, in Alabama the recovery for  
11 wrongful death is couched in terms of  
12 punitive damages. So that, read  
13 literally, there could be no recovery  
14 under this document for a wrongful  
15 death that would have as its  
16 operative jurisdiction the State of  
17 Alabama.18 This provision was inserted to  
19 cure that problem, to make it  
20 possible for what we would all --  
21 what we all regarded as  
22 run-of-the-mill ordinary death claims  
23 that happened to occur in Alabama to  
24 recover under the terms of the trust.

C1

PP's  
Obj:  
R,  
BE,  
F1 Q. You've represented  
2 numerous what have come to be known  
3 as asbestos creditors committees, or  
4 ACCs, correct?

5 A. Yes.

6 Q. And as counsel you are  
7 representing the members of that  
8 committee, correct?9 MR. FINCH: Object to  
10 form.

11 A. Yes.

12 Q. And those members have  
13 fiduciary duties; is that correct?

14 A. Yes.

15 Q. To whom do those  
16 fiduciary duties run?17 A. The entire  
18 constituency.19 Q. Who is the  
20 constituency?21 A. All asbestos claimants  
22 against the particular debtor.23 Q. Irrespective of the  
24 validity of their claims; is thatPP's  
Obj:  
R

<p>1 correct?  2 MR. FINCH: Object to  3 form.  4 A. Well, when I say "a  5 claimant", I presuppose that they  6 have a claim.  7 Q. So you operate on the  8 assumption, is it correct, that  9 somebody that is represented by a  10 lawyer that is asserting a claim has  11 a valid claim against that particular  12 debtor?  13 A. No. You asked me to  14 whom did the fiduciary duty extend.  15 It extends to those folks who have  16 claims.  17 Q. Is there a fiduciary  18 duty of the committee to attempt to  19 ferret out those people who have come  20 before the Bankruptcy Court but do  21 not have meritorious claims?  22 A. No. The committee's  23 duty is to participate in the  24 preparation of a TDP and a plan that</p>	<p>PP's Obj: R Page 230</p> <p>1 A. Yet-to-come claimants.  2 Q. -- yet-to-come  3 claimants?  4 A. But he also is  5 interested in seeing to it that as  6 much money as possible goes in the  7 pot.  8 Q. They have a common  9 interest in maximizing the size of  10 the pot, correct?  11 A. I believe so.  12 Q. And it is therefore in  13 the interest of the asbestos  14 creditors committee and the FCR to  15 see as much insurance money paid into  16 that pot as quickly as possible,  17 correct?  18 A. Sure.  19 Q. And when the trust is  20 established, the trust owes a  21 fiduciary duty to its beneficiaries,  22 correct?  23 A. Correct.  24 Q. And --</p> <p>PP's Obj: R Page 231</p> <p>1 will, as best possible, pay claims  2 that are valid and in as an efficient  3 manner as possible.  4 Q. And as representatives  5 of existing claimants, the ACC wants  6 to get as much money as possible for  7 the existing claimants, correct?  8 A. First of all, the ACC  9 are the victims who are appointed to  10 the committee. You seem to be  11 fudging over talking about their  12 lawyers.  13 Q. I don't think that I am,  14 but please --  15 A. Okay. I'm talking about  16 the claimants. Surely, their job is  17 to see in the debates among the  18 various creditor constituencies how  19 much of the pie that's available to  20 all creditors can be allocated to  21 asbestos claimants.  22 Q. Okay. And the FCR has a  23 different constituency. Those  24 are --</p>
	<p>1 A. The trustees do.  2 Q. The trustees.  3 And the beneficiaries of the  4 trust --  5 A. Yes.  6 Q. -- are existing and  7 future claimants against that debtor  8 who's established a trust, correct?  9 A. Correct.  10 Q. And the trust has a  11 fiduciary duty to maximize the  12 compensation to its beneficiaries,  13 correct?  14 MR. FINCH: Object to  15 form. Mischaracterizes the  16 document.  17 A. Sure.  18 Q. And the main issue  19 between the current claimants and the  20 future claimants is ensuring that  21 enough money is available going out  22 in time to assure as much as possible  23 the non-preferential treatment of  24 each claim. Is that correct?</p> <p>PP's Obj: R; BE Page 233</p>

C1

1 A. You could -- that's  
2 fair. That's a fair way to put it.  
3 Q. And the trust,  
4 similarly, shares an interest in  
5 getting as much money into the trust  
6 from whatever source as quickly as  
7 possible. Is that correct?  
8 MR. FINCH: Object to  
9 form.  
10 A. Yes. The trustees also  
11 have a fiduciary responsibility in  
12 addition to the futures rep to see to  
13 it that all claimants that come  
14 before the trust are treated more or  
15 less equitably.  
16 Q. Do the trustees have any  
17 duty at all to the insurers?  
18 A. As insurers?  
19 Q. Yes.  
20 A. Not that I can think  
21 of.  
22 Q. In fact, with respect to  
23 the insurance relationship, typically  
24 insurers are in an adversarial

C1

1 position with the trust, correct?  
2 A. Yes.  
3 Q. You've been involved, as  
4 you said, as counsel for what we  
5 could colloquially call the Manville  
6 TAC, correct?  
7 A. Correct, yes. Still  
8 am.  
9 Q. Are you familiar with  
10 the Manville trust's having issued  
11 pronouncements that it will no longer  
12 honor claims that are submitted based  
13 upon the diagnosis of certain doctors  
14 whose reliability has been called  
15 into question?  
16 A. I am.  
17 Q. Would you take a look at  
18 page 40 of the TDPs, please,  
19 5.7(a)(2), regarding the credibility  
20 of medical evidence?  
21 A. Yes.  
22 Q. There's no reference to  
23 the doctors who have been  
24 discredited -- strike that.

PP's  
Obj: R.  
BE  
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PP's  
Obj:  
R

1 There's no reference in these  
2 TDPs to the doctors who the Manville  
3 trust will no longer consider paying  
4 claims based upon their diagnosis, is  
5 there?

6 A. That's correct.  
7 Q. Do you know why those  
8 doctors are not identified here?

9 A. Because it's for the  
10 trustees to decide whether or not  
11 they will list one or another  
12 facility as being a facility whose  
13 evidence they will not credit.

14 Q. And the trustees are  
15 supposed to consult with TAC members  
16 about that; is that correct?

17 MR. FINCH: Object to  
18 form.

19 A. Not necessarily.

20 Q. In Manville, is there a  
21 cap on the contingent fee that  
22 plaintiffs' attorneys can recover?

23 A. There is.

24 Q. And that is how much?

PP's  
Obj: R  
Page 235PP's  
Obj:  
R

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1 A. 25 percent.  
2 Q. Is the rationale for  
3 that because it's a lot easier to  
4 recover from a trust than it is to  
5 recover from a defendant in the tort  
6 system?

7 A. No.

8 MR. FINCH: Objection.

9 Q. Is there a rationale for  
10 that?

11 A. Jack Weinstein insisted  
12 on it.

13 Q. To your knowledge, has  
14 any trust, other than the one that  
15 the judge insisted upon imposing a  
16 fee cap, ever imposed a contingent  
17 fee cap on the recovery of  
18 plaintiffs' attorneys?

19 A. No. And remember that  
20 Weinstein was sitting over the  
21 question of the fairness of a class  
22 action settlement. He was not  
23 sitting as a bankruptcy judge.

24 Q. Is that fair to say that

PP's  
Obj:  
R

<p>1 you were the most responsible --  2 sorry -- the ACC is the most  3 responsible for preparing the TDPs;  4 is that right?</p> <p>5 MR. FINCH: Object to  6 form.</p> <p>7 A. As among what group?</p> <p>8 Q. Well --</p> <p>9 A. We were more responsible  10 than the New York City Police  11 Department.</p> <p>12 Q. Well, in the course of  13 negotiating TDPs and plans generally  14 when you are representing --</p> <p>15 A. Yes.</p> <p>16 Q. -- ACCs, is it typical  17 for the ACC's counsel to draft the  18 first draft?</p> <p>19 A. Of the TDP?</p> <p>20 Q. Yes.</p> <p>21 A. Yes.</p> <p>22 Q. And then it's typical  23 that the FCR would do further comment  24 on it?</p>	<p>Page 238</p> <p>PP's Obj: R</p> <p>1 Q. Is that your experience,  2 however?</p> <p>3 MS. BAER: Objection.</p> <p>4 MR. FINCH: Object to  5 form, foundation.</p> <p>6 A. I don't read their  7 minds.</p> <p>8 Q. Typically, is the  9 involvement of debtors in such  10 situations in the negotiation of TDPs  11 limited to the issues that I've just  12 mentioned?</p> <p>13 MS. BAER: Objection.</p> <p>14 MR. FINCH: Object to  15 form.</p> <p>16 MS. BAER: Form,  17 foundation.</p> <p>18 A. No, no. The debtors  19 have an interest in dealing with  20 objectors that might have objections  21 to the TDP and they'll address those  22 issues with us and with the futures  23 rep, and it would depend on the  24 particular case.</p>
<p>1 A. Have to, yes.</p> <p>2 Q. Is it fair to say that  3 the FCR and the ACC are the  4 constituencies that are most  5 concerned with the contents of a  6 TDP?</p> <p>7 MR. FINCH: Object to  8 form.</p> <p>9 A. Yes.</p> <p>10 Q. Is it fair to say that  11 once a debtor has cut an economic  12 deal with the asbestos constituencies  13 that its interest in the TDPs are  14 primarily to ensure that they will  15 garner the necessary supermajority  16 vote and comply with 524g so that a  17 plan could be confirmed?</p> <p>18 MR. FINCH: Objection to  19 form.</p> <p>20 MS. BAER: Objection.  21 Objection to form, lack of  22 foundation.</p> <p>23 A. You'd have to ask  24 them.</p>	<p>Page 239</p> <p>PP's Obj: R</p> <p>1 MR. J. COHN: I pass the  2 witness. Thank you.</p> <p>3 THE WITNESS: Anybody  4 else?</p> <p>5 MR. FINCH: Anybody  6 else?</p> <p>7 EXAMINATION BY  8 MS. ABRAVANEL:</p> <p>9 Q. Mr. Inselbuch, my name  10 is Karen Abravanel. I'm from Simpson  11 Thacher and I represent Travelers  12 Casualty &amp; Surety.</p> <p>13 You said that you haven't  14 reviewed any of the insurance  15 policies at issue in these  16 procedures. Is that right?</p> <p>17 A. That's my best  18 recollection.</p> <p>19 Q. Have you reviewed any of  20 the settlement agreements entered  21 into between Grace and its insurers  22 pre-petition?</p> <p>23 A. I do not believe so.</p>

1 claim?

2 MR. FINCH: Objection.  
 3 Form, foundation, calls for  
 4 speculation, hypothetical.  
 5 A. As a general  
 6 proposition, an indirect claimant  
 7 steps into the shoes of the claimant  
 8 because the basis for the indirect  
 9 claim is that he have absolved the  
 10 trust from the direct claimant's  
 11 claim. So they could step into the  
 12 shoes of the claimant, they could  
 13 proceed as an expedited claim, they  
 14 could proceed as an individual review  
 15 claim. If there were an entitlement  
 16 to extraordinary treatment, that  
 17 would apply.

18 Q. Okay.

19 A. Whatever -- whatever the  
 20 rules that would apply to the direct  
 21 claimant would apply to the indirect  
 22 claimant.

23 Q. Okay. And let me just  
 24 be a little bit more specific. Would

1 MR. DEMMY: I'll do them  
 2 from down here. If you can't  
 3 hear me, just let me know.

4 THE WITNESS: I can hear  
 5 you.

6 MR. FINCH: Who are you  
 7 and who do you represent? I  
 8 know who you are. Who do you  
 9 represent?

10 MR. DEMMY: I will do  
 11 that.

12 C1  
 13 EXAMINATION BY  
 14 MR. DEMMY:

15 Q. My name is John Demmy  
 16 and I represent Firemen's Fund  
 17 Insurance Company and some other  
 18 related insurers.

19 In the Grace case, does the  
 20 committee conduct its business  
 21 through periodic meetings?

22 A. Yes.

23 Q. Do you participate in  
 24 those meetings?

PP's  
 Obj:  
 R

1 the PI -- will the PI trust apply the  
 2 payment percentage of a payment --

3 A. Yes.

4 Q. -- on an indirect PI  
 5 trust claim?

6 A. Yes.

7 Q. Okay. Can you tell me,  
 8 on the flip side, if the plan is  
 9 confirmed how will the asbestos PI  
 10 trust calculate an insurer's payment  
 11 obligation under an asbestos  
 12 reinsurance agreement?

13 A. I have no idea.

14 MR. FINCH: Objection.

15 Q. Sorry, sorry. Asbestos  
 16 reimbursement agreement.

17 MR. FINCH: Objection to  
 18 form and foundation.

19 A. I have no idea.

20 MS. ABRAVANEL: Okay, I  
 21 have no further questions.  
 22 Thank you.

23 THE WITNESS: Anybody  
 24 else?

1 A. I do.

2 Q. Who typically  
 3 participates in those meetings?

4 A. Counsel for each of the  
 5 individual committee members, counsel  
 6 for the committee, and whoever else  
 7 in a particular situation might be  
 8 asked to participate.

9 Q. Do the appointed  
 10 committee members, the holders of  
 11 claims, ever participate in the  
 12 committee meetings?

13 A. Not usually.

14 Q. Do they ever?

15 A. There have been an  
 16 occasion where they did but it's --  
 17 it would be most unusual.

18 MR. DEMMY: Okay, that's  
 19 all the questions I have.

20 Thank you.

21 THE WITNESS: Anybody  
 22 else?

23 MR. FINCH: Next?

24 MR. DOWNEY: Phil